

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GREGORY S. FRISBIE**

Claimant

VS.

**DILLONS**

Respondent

Self-insured

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Docket No. 239,336

**ORDER**

Respondent appeals Administrative Law Judge Bruce E. Moore's October 26, 2000, Award. The Appeals Board heard oral argument on April 25, 2001.

**APPEARANCES**

James B. Zongker of Wichita, Kansas, appeared on behalf of the claimant. Scott J. Mann of Hutchinson, Kansas, appeared on behalf of the self-insured respondent.

**RECORD AND STIPULATIONS**

The Appeals Board (Board) has considered the record and has adopted stipulations listed in the Award. The Award listed claimant's stipulated average weekly wage as \$885.92. But the record established the \$885.92 average weekly wage was a clerical error and the average weekly wage used to compute claimant's wage loss was \$855.92. Also, not listed in the Award stipulations, but contained in the record, is the parties' stipulation that claimant's work-related cervical spinal injury resulted in a 5 percent whole body permanent functional impairment.

**ISSUES**

The only issue for Board review is the Administrative Law Judge's (ALJ) conclusion that claimant is entitled to a 29.75 percent permanent partial general disability based on a work disability. Respondent appeals and contends that the reason claimant cannot return to his pre-injury warehouseman's job is not because of the work-related cervical spinal injury, but is because of a preexisting low back condition not related to the July 4, 1998, work-related accident.

Claimant argues that before his work-related July 4, 1998, cervical injury, he was capable of performing his heavy warehouse job duties but now, as a result of the cervical injury, he can no longer perform those duties. Thus, the claimant argues he is entitled to a work disability and requests the Board to affirm the Award.

The only issue on appeal is the nature and extent of claimant's disability and specifically claimant's entitlement to a work disability.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and the parties' oral arguments, the Board makes the following findings and conclusions:

The Board finds the ALJ's Award entitling claimant to a 29.75 percent permanent partial general disability based on the average of a 47 percent wage loss and a 12.5 percent task loss should be affirmed.<sup>1</sup> The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. In particular, the Board agrees, that claimant's testimony in regard to the residual affects of his work-related cervical injury, coupled with Dr. Philip R. Mills' permanent work restrictions imposed on claimant as a result of the cervical injury, prove it is more likely than not that claimant can no longer perform the heavy warehouse job duties. Fortunately, claimant was able to exercise more than 10 years of seniority and remains employed by the respondent. But the shipping clerk job at respondent's warehouse operation located in Goddard, Kansas, some 55 miles from his home pays claimant 47 percent less than his pre-injury warehouse job.

The Board further agrees with the findings of fact and conclusions of law that are set out in the Award. It is not necessary to repeat those findings and conclusions. Therefore, the Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Board that ALJ Bruce E. Moore's October 26, 2000, Award should be, and is hereby, affirmed in all respects.

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<sup>1</sup> See K.S.A. 1998 Supp. 44-510e(a).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James Zongker, Attorney for Claimant  
Scott J. Mann, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Phillip S. Harness, Director of Workers Compensation